

**AUG 25 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ELMER VILLANUEVA-ESCOBAR,  
a/k/a RENE MAURICIO VILLANUEVA,  
RENEE ALVARADO, RENE  
MAURICIO VILLANUEVA, ELMER  
ODIR VILLANUEVA, RENE CARLOS  
ESCOBAR, ANTONIO PINDEA,  
CARLOS PINEDA, RENE MAURICIO  
ESCOBAR, ELMER VILLANUEVA,  
ANTONIO PINEDA-ESCOBAR,  
ANTONIO ESCOBAR, ANTONIO E.  
PINEDA, ELMIR ODIR VILLANUEVA,  
RENE VILLANUEVA AND ELMER  
OTIR VILLANUEVA,

Defendant-Appellant.

No. 05-50617

D.C. No. CR-05-00110-GPS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
George P. Schiavelli, District Judge, Presiding

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Submitted August 21, 2006 \*\*

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Elmer Villanueva-Escobar appeals his 70-month sentence imposed following his guilty plea to being found in the United States after illegal re-entry, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Villanueva-Escobar contends that the district court violated his constitutional rights by imposing a sentence in excess of the two-year maximum set forth in 8 U.S.C. § 1326(a) based on a prior conviction that was not proved to a jury. This contention is foreclosed by *United States v. Beng-Salazar*, 452 F.3d 1088, 1091 (9th Cir. 2006). Moreover, Villanueva-Escobar has conceded that the indictment alleged, and that he so admitted during the plea colloquy, that he had been convicted on July 20, 1994 and subsequently deported on October 2, 1997 and August 3, 2000.

**AFFIRMED.**

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\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).